

THB(1)PML 8/10/90/8
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3919 3513

2877 5029
elee@legco.gov.hk

By Fax (2523 0030)

14 April 2015

Miss Joyce CHAN
Assistant Secretary for Transport and Housing (Transport)10C
Transport Branch
Transport and Housing Bureau
21/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Miss CHAN,

**Merchant Shipping (Prevention of Pollution by Garbage) Regulation
(L.N. 74 of 2015)**

I am scrutinizing the captioned Regulation (the Regulation) with a view to advising Members on its legal and drafting aspects and would like to seek information or clarification on the following matters –

Modifications to Annex V and adopted in the Regulation

- (a) in light of paragraph 5 of the LegCo Brief (File Ref: THB(1) PML 8/10/90/8) issued by the Transport and Housing Bureau dated 8 April 2015, the Regulation is made "for the implementation of the latest version of MARPOL Annex V in Hong Kong", please provide a copy of the Annex and information which highlights the modifications (if any) that have been made in L.N. 74 in respect of the Annex.

Definitions and terms used in the Regulation

- (b) it is noted that the term "nearest land" is defined in the Regulation but the term "nearest ice shelf" is not defined in the Regulation, please provide information regarding the nature of "nearest ice-shelf" and relevant considerations of not defining the term in the Regulation ;
- (c) in respect of the description "which is (or are) regulated under any other subsidiary legislation made under the Ordinance" that appears in Part 2 of the Regulation, please provide information on the kinds of substances and the corresponding pieces of subsidiary legislation to which the description applies;
- (d) in respect of sections 4(2)(a), 5(1) and 5(2) of the Regulation, it seems that a ship which is located within 500m of a fixed or a floating platform necessarily includes a ship which is alongside the platform concerned, please provide the considerations of specifically providing that "the ship is alongside or within 500m of a fixed or floating platform" in the said sections;
- (e) in respect of the term "deficiency" that is stated in the respective sections 16(4) and 16(5) of the Regulation, please consider whether the term needs any explanation or elaboration on its application;

Factors to be considered in relation to a requirement or a power that is exercised

- (f) in respect of section 5(3)(b) of the Regulation, which provides that "it is clear that the retention of the food wastes on board presents an imminent health risk to the persons on board", please provide information on the factors that will be taken into account in deciding whether it is clear that the retention presents the relevant risk;
- (g) in respect of section 13(1) of the Regulation, which provides that, among other things, "...the discharge or loss poses a significant threat to the marine environment or navigation, the master...", please provide information on the factors that will be taken into account in deciding whether the discharge or loss poses a significant threat;
- (h) in respect of section 14 of the Regulation, please provide information on the factors that the Director of Marine may take into account in deciding whether to grant an exemption under the section;

Garbage Management Plans and Garbage Record Books

- (i) in respect of section 10(4)(a) of the Regulation, please clarify the legislative intent of requiring a Garbage Management Plan to provide for the procedures for "minimizing the volume of garbage" instead of "minimizing of garbage" as stated in paragraph 8(b) of the LegCo Brief ;

Offences and liabilities under the Regulation

- (j) in respect of section 13(1) of the Regulation, which imposes a duty only on the master of a ship to report a discharge or loss of any fishing gear from the ship under certain conditions, and in light of section 19(1) which provides that, among other things, that if section 13(1) is contravened in respect of a ship, the owner and the master of the ship each commits an offence, please provide the legal justifications for making the owner of the ship concerned liable pursuant to section 19(1) in case where section 13(1) (which relates to the master of a ship only) is contravened;

Change in scope of regulation

- (k) in light of the definition of "garbage" in the existing Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Cap.413J) and, according to paragraph 6 of the LegCo Brief, cooking oil is not regulated under the existing Cap. 413J, please provide the legal justifications that cooking oil (whether used or unused and is disposed of from a ship or a fixed or floating platform) may not be considered as a kind of domestic waste that is included in the said definition.

As the House Committee will consider the captioned Regulation at its meeting on 17 April 2015, we would be grateful to have your response in both Chinese and English language on or before 16 April 2015, if practicable.

Yours sincerely,

(Miss Evelyn LEE)
Assistant Legal Adviser

c.c. Marine Department
(Attn: Mr LAI Ying-keung
Chief, Maritime Policy)
(Fax: 2542 4841)

DoJ
(Attn: Ms Francoise LAM
Senior Assistant Law Draftsman (Marine Legislation))
(Fax: 2869 1302)

LA